

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID W. SVETE,

Plaintiff,

vs.

HOWARD F. WUNDERLICH, *et al.*,

Defendants.

Case No. 2:09-cv-00345-JCM-GWF

ORDER

Motion for Stay and/or
Continuance (#26)

This matter comes before the Court on Plaintiff's Emergency Motion for Stay and/or Continuance (#26), filed on March 22, 2012. Plaintiff requests the Court stay this case for 90 days because he is getting transferred to another federal correctional institution and he recently sustained an injury to his right arm preventing him from drafting pleadings in this matter. Upon review of the docket, it appears that the Defendants were never served with the complaint and have yet to make an appearance in this case. On April 20, 2011, the Court screened Plaintiff's complaint, ordering Plaintiff's complaint to be filed and instructing Plaintiff on how to proceed with service of process on the Defendants. That same day, the Clerk of the Court issued summons to each of the named-Defendants. To date, none of the named-Defendants have made an appearance in this matter, leading the Court to conclude that service of the summons and complaint never took place.

As the Defendants have not yet made an appearance in this action, a stay is not warranted. The Court however will once again instruct the Plaintiff on the process for perfecting service on Defendants and grant Plaintiff an additional 120 days from the date of this Order to serve the Defendants in this action. The 120 day extension of time for service should allow Plaintiff enough time to get settled in his new correctional facility and further allow time for his injury to heal. If ...

1 proof of service is not filed with the Court by Monday, July 23, 2012, Plaintiff's case will be
2 subject to dismissal for lack of prosecution. Accordingly,

3 **IT IS HEREBY ORDERED** that Plaintiff's Emergency Motion for Stay and/or
4 Continuance (#26) is **denied**.

5 **IT IS FURTHER ORDERED** that the Court will extend the period of time for service an
6 additional 120 days from the date of this Order. Plaintiff has until **Monday, July 23, 2012** to file
7 proof of service with the Court or this case will be subject to dismissal for lack of prosecution
8 pursuant to Rule 4(m).

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall re-issue summons to the
10 defendants named in the complaint and deliver the summons to the U.S. Marshal for service. The
11 Plaintiff shall have forty (40) days to furnish to the U.S. Marshal the required USM-285 forms.
12 After Plaintiff receives copies of the completed USM-285 forms from the U.S. Marshal, he has
13 twenty (20) days to file a notice with the court identifying which defendants were served and which
14 were not served, if any. If the Plaintiff wishes to have the U.S. Marshal attempt service again on
15 any unserved defendant, then a motion must be filed with the court identifying the unserved
16 defendant, specifying a more detailed name and address, and indicating whether some other manner
17 of service should be used.

18 DATED this 23rd day of March, 2012.

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21 GEORGE FOLEY, JR.
22 United States Magistrate Judge
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